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MONTANA PROSECUTOR

MAY-OCTOBER/1982 VOL. 6, No. 2

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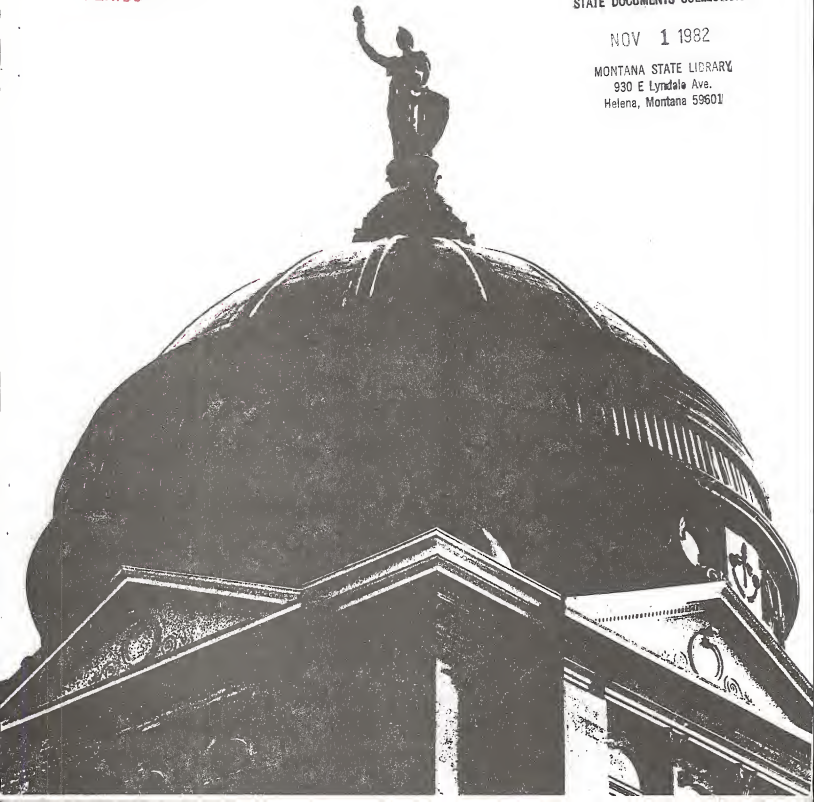


INTRODUCTORY NOTES

FALL MEETING - TRAINING SEMINAR

On December 2 and 3, 1982 in Billings, Montana at the Ramada Inn a Trial Techniques Seminar will be presented. The seminar will be sponsored by the Montana County Attorneys Association and presented by the National College of District Attorneys. The schedule is as follows:

Thursday - December 2, 1982

8:00 a.m. - 9:00 a.m.	Registration and Distribution of Course Materials
9:00 a.m. - 9:15 a.m.	Orientation and Welcome
9:15 a.m. - 10:15 a.m.	Case Preparation - Michael Ficaro
10:15 a.m. - 10:30 a.m.	Break
10:30 a.m. - 11:30 a.m.	Jury Selection - John Roll
11:30 a.m. - 12:30 p.m.	Lunch
12:30 p.m. - 1:30 p.m.	Opening Statement - Michael Ficaro
1:30 p.m. - 1:45 p.m.	Break
1:45 p.m. - 3:15 p.m.	Direct Examination - Christopher Munch
3:15 p.m. - 3:30 p.m.	Break
3:30 p.m. - 5:00 p.m.	Insanity Defense/Meeting Defenses - John Roll
5:00 p.m.	Adjourn

Friday - December 3, 1982

9:00 a.m. - 10:30 a.m.	Cross-Examination - James Allison
10:30 a.m. - 10:45 a.m.	Break
10:45 a.m. - 12:00 p.m.	Closing Argument - Christopher Munch
12:00 p.m. - 1:00 p.m.	Lunch
1:00 p.m. - 2:30 p.m.	Perspective on Prosecution James Allison
2:30 p.m. - 3:30 p.m.	Legislative Meeting - MCAA
3:30 p.m.	Adjourn

There will be a $30.00 registration fee assessed to each attendee. The seminar will begin at 8:00 a.m. December 2, 1982 and will conclude at 3:30 p.m. on December 3, 1982. In order to secure an attendee reservation, contact Karen Ferreira, County Prosecutor Services Bureau, 303 Roberts, Helena, Montana 59620 (449-3816) by November 26, 1982. Reservations will be taken on a first-come, first-serve basis.

Securing accomodations is the responsibility of each attendee. If reservations cannot be secured at the Ramada Inn (248-7151), the Holiday Inn West or the Thrifty Scott Motel are right across the street from the Ramada Inn.

It is intended that the Montana County Attorneys Association will seek to have this course qualify as approved continuing legal education activity.

LEGISLATIVE COMMITTEE MEETING

The Legislative Committee of the Montana County Attorneys Association composed of Jim Seykora, Rae Kalbfleisch, Ed Laws, Ed McLean, Harold Hanser, and Don White will meet on November 18, 1982 in Helena to establish legislative priorities for the Association's legislative agenda. If you have any suggested legislative topics that have not already been submitted, forward them to Marc Racicot, 303 Roberts, Helena, Montana 59620.

MOST ASSAILANTS ARE STRANGERS TO THEIR VICTIMS

About three of five violent crimes are committed by persons who are strangers to their victims, according to a new Bureau of Justice Statistics bulletin. Copies of the bulletin "Violent Crime By Strangers" may be obtained by writing the National Criminal Justice Reference Service at Box 6000, Rockville, Maryland 20850.

RECENT CASES AND NOTES

PRISON POPULATION STILL RISING

The number of people confined in state and federal institutions surpassed 350,000 during the third quarter of last year, the Bureau of Justice Statistics has announced. On September 30, 1981, the inmate population stood at 357,043, which is 8,000 more prisoners than in the previous quarter and 30,000 more than at the beginning of 1981. The bureau said growth in prison population during the third quarter of last year was 2.1 percent, down slightly from that of the first two quarters of the year. Nevertheless, during the first nine months of 1981, the prison population increased at an annual rate in excess of 10 percent, substantially more than the increases that occurred in 1979 and 1980 and surpassing the record annual increase recorded in 1975. All of the third-quarter growth occurred among state institutions. The number of federal prisoners, 25,726, was virtually unchanged from the previous quarter.

Thirteen states reported prison population declines in the third quarter of 1981, but in six of these it was less than 1 percent. New Mexico experienced the largest population decrease (10 percent). Another 13 states posted growth rates twice as high as the average for the states as a whole. Mississippi led the increases with a third-quarter gain of 15 percent.

ASSAULT - DANGEROUS WEAPONS - HUMAN HANDS

It has been held that hands can qualify as "dangerous weapons" under an assault statute, even if the defendant "has had no training in the martial arts, boxing, or in any other specialized field ***." The trial court stated that "'*** hands are not per se dangerous weapons, but they are a means to produce death. And they were used, even though briefly, *** in a manner and in such circumstances as could be reasonably calculated to produce death.'" State v. Zangrilli, 440 A.2d 710 (R.I., 1-9-82).

ARREST - WHAT CONSTITUTES - REQUEST FOR IDENTIFICATION

A request by a police officer that a citizen answer a few questions and identify himself does not automatically turn that encounter into a "seizure" for the purposes of the Fourth Amendment. The Court took the position that a Fourth Amendment seizure occurs when a police officer, by force or show of authority, leads a reasonable person to believe that he is not free to walk away from the encounter. An officer's request that a citizen answer a few questions and identify himself does not alone amount to such a show of authority. The citizen can always walk away from encounters of this kind. "To suggest °that a request for identification constitutes a seizure! would prevent an officer from inquiring whether a person who appears to be in distress needs help, from questioning

ARREST (CONT.)

potential witnesses, and from seeking the voluntary cooperation of citizens." Other factors relevant to the question of whether the citizen's liberty has been restrained include the way the officer approaches the citizen and the tone of his questions. Gomez v. Turner, ___ F.2d ___, 30 Cr. L. 2445, D.C. Cir., 2-26-82.

SEARCH - WHAT CONSTITUTES - LOOKING OVER FENCE FROM PRIVATE ALLEY

When a police officer looked over and through a six-foot high fence and into a private back yard, this was not a "search" within the meaning of the Fourth Amendment. The marijuana plants that he saw growing there and the other drugs seized from inside the residence pursuant to a warrant, were properly admitted into evidence at the resident's trial. The officer had received an anonymous phone tip about the marijuana plants. He proceeded to an alley adjacent to the back yard and stood on a concrete block in order to peer over the fence. He also looked through cracks in the picket-type fence and through a gap between the gate and the rest of the fence. His observation led him to obtain a warrant for the residence, from wich he seized both marijuana and psilocybin. The Court ruled that the officer had a "perfect right" to be in the public alley and that the resident lacked an objectively reasonable expectation of privacy to protect him from the officer's observations, and that the officer's plain view observations provided probable cause for the warrant to search the house. People v. Reiss, 181 Cal. Rptr. 166, 30 Cr. L. 2496. (Cal.App., 1982).

SEARCH INCIDENT TO ARREST - AUTOMOBILES - CLOSED VINYL BAG - NEW YORK V. BELTON

Under the rule of New York v. Belton, ___ U.S. ___ (1981) the warrantless opening of a vinyl bag's zippered-shut compartment violated neither the federal nor the California Constitution. The bag was discovered on the floor of an automobile during a lawful search incident to the driver's arrest for driving under the influence of alcohol. Protruding from an open compartment in the bag was a pistol, which the searching officer removed, thereby uncovering several shotgun shells in the bottom of the compartment. He then picked the bag up and felt a heavy object in the closed center portion of the bag. Upon opening this compartment he discovered a loaded sawed-off shotgun. People v. Frank, ___Cal. Rptr. ___, 30 Cr. L. 2470, (Cal.App., 1982).

ESCOBEDO - REFUSAL OF POLICE TO INFORM SUSPECT OF ATTORNEY'S ATTEMPT TO COMMUNICATE WITH HIS CLIENT

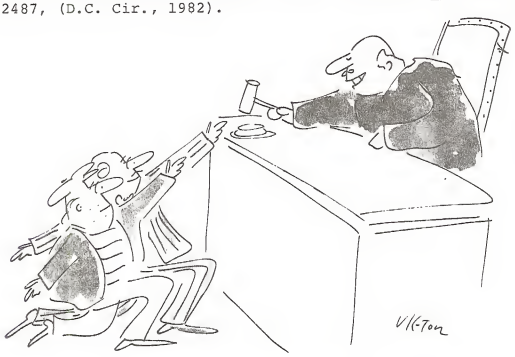
The Supreme Court of Louisiana has held that police officers violated the state constitutional right to counsel of the defendants by rejecting their defense attorney's request to talk to the interrogating officer and by failing to inform the suspects that their attorney was seeking to assist them. In an earlier case, which was based on the federal Constitution, the Court ordered the suppression of statements made by an arrestee whose lawyer, unknown to her, had

ESCOBEDO (CONT.)

requested that she not be interrogated until the lawyer could confer with her. State v. Jackson, 303 So.2d 734 (1974). In the instant case the Court ruled: "We hold that when, unknown to the person in this situation, an identified attorney is actually available and seeking an opportunity to render assistance to him, and the police do not inform him of that fact, any statement or the fruits of any statement obtained after the police themselves know of the attorney's efforts to assist the arrested person cannot be rendered admissible on the theory that the person knowingly and intelligently waived counsel. *** A suspect indifferent to an abstract offer to call a nameless lawyer may regard differently his opportunity to talk to an identified attorney actually available and willing to assist him during interrogation. *** Further, the authorities may not ignore or refuse to communicate with an attorney seeking to assist his client." State v. Matthews, ___So.2d ___, 30 CrL 2439, (La., 1982).

NARCOTICS - INTENT TO SELL - EXPERT TESTIMONY

Expert testimony of a Government witness was insufficient in this case to demonstrate an intent to sell by a defendant who was caught with 21 packets of low-purity heroin in his car. The witness, a police detective knowledgeable about illegal narcotics activities, testified that the facts surrounding the case were inconsistent with the defendant's possession of the heroin just for his personal use. Heroin users usually cannot afford to buy more than one bag at a time, and if a user does come up with enough money to buy a larger quantity he would buy in bulk and in a purer form. The chief defect in the Government's case on this point was that there was no evidence showing how this particular defendant fit the pattern described by the expert. Nor was there any evidence to support the witness' conclusion that the defendant and an unidentified passenger in his car were cooperating in a drug-sale scheme just prior to the defendant's arrest. U.S. v. Payton, ___ F.2d ___, 30 CrL 2487, (D.C. Cir., 1982).



"Funny. Very funny. But guilty."

SUPREME COURT DECISIONS

DEFENDANT CAN BE IMPEACHED WITH POST-ARREST, PRE-MIRANDA WARNINGS

Fletcher v. Weir, 102 S.Ct. 1309, 30 CrL 4255 (March 22, 1982).

In this case the U.S. Supreme Court approved a state prosecutor's impeachment use of a defendant's silence occurring between the time of his arrest and the giving of Miranda warnings. In Doyle v. Ohio, 426 U.S. 610 (1976) the Court declared that no impeachment use could be made of silence occurring after the defendant was warned of his rights. Doyle was distinguished, however, in Jenkins v. Anderson, 447 U.S. 231 (1980) where it was held that a defendant may be cross-examined about his pre-arrest silence. The Court below recognized that this case fell somewhere between the two earlier precedents but concluded that it was more like Doyle. Post-arrest silence is no more probative than post-warnings silence, it said, and "many if not most persons under arrest know of their right to silence and exercise that right." The Supreme Court, however, considered this an "overly broad reading" of Doyle. The crucial factor in Doyle was the giving of the warnings. But "[i]n the absence of the sort of affirmative assurances embodied in the Miranda warnings, we do not believe that it violates due process of law for a State to permit cross-examination as to post-arrest silence when a defendant chooses to take the stand."

INTERIM CHARGING PERIODS NOT INCLUDED IN CALCULATION OF SPEEDY TRIAL RIGHTS

United States v. MacDonald, ___S.Ct. ___, 30 CrL 3111 (March 31, 1982).

The U.S. Supreme Court had held that the period between the dismissal of one set of criminal charges and the same sovereign's institution of a new set has no significance for purposes of the Speedy Trial protection contained in the Sixth Amendment. The Speedy Trial protection does not run if the defendant is neither under arrest nor the subject of a formal accusation.

The Court differentiated between the interests served by the Sixth Amendment guarantee, on the one hand, and the Due Process Clause and statutes of limitations on the other. The latter are directed at the prejudice that delay can cause to a defendant's case; in contrast, the Speedy Trial Clause is meant to reduce interference with such interests as a defendant's employment and associations and to minimize the public obloquy and anxiety he suffers during the pendency of criminal charges. Much of the danger to those interests is eliminated when charges are dismissed. After that time the burdens such as restraint on liberty are no greater on the defendant than "upon anyone openly subject to a criminal investigation." In this case the defendant suffered "stress and other adverse consequences" even after the charges were dismissed, but at that point he "was legally and constitutionally in the same posture as though no charges had been made."

STOP AND FRISK - SEIZURE - WHAT CONSTITUTES - AIRPORT CONFRONTATIONS

It has been held that a confrontation between two police officers and a drug suspect in a busy public concourse at an airport was not a "seizure" within the purview of the Fourth Amendment. Adopting the definition of seizure proposed in U.S. v. Mendenhall, 446 U.S. 544 (1980), the Court concluded that a reasonable person in the suspect's situation would have felt free to terminate the encounter. The officers were casually dressed, displayed no weapons, and talked in conversational tones. They did ask for and receive the suspect's driver's license and airline ticket, but the Court believed that the "mere request for and voluntary production of such documents *** falls into the category of a non-coercive police-citizen encounter." Although acknowledging that retention of these documents beyond the time required for brief scrutiny may be the hallmark of a seizure, the Court concluded that by the time any seizure occurred the police had reasonable suspicion to support it. U.S. v. Black, 675 F.2d 129, (7th Cir., 1982)

AIRPORT STOPS - DRUG COURIER PROFILES

The former Fifth Circuit Court of Appeals, sitting en banc, has taken the position that not every airport confrontation between law enforcement officers and suspected drug smugglers consitutes a "seizure" within the meaning of the Fourth Amendment, but the line between mere "communications" and seizures requiring a reasonable suspicion of criminal activity is a very narrow one, and any amount of coercion on the part of the police will turn the incident into a Fourth Amendment seizure. Examples of such coercion include blocking a suspect's path, retaining his airline ticket, and informing him that he is suspected of carrying drugs. The Court takes the position that drug courier profiles themselves have no legal significance whatsoever in the determination of reasonable suspicion for a seizure. This does not mean that the characteristics listed in the profiles are irrelevant to the determination; however, they are entitled to no greater weight because of their presence on such lists. Also to be scruntinized carefully are police requests for a suspect to accompany them to a private office in the airport. Such requests, without the suspect's consent, amount to full arrests requiring probable cause, and proof of any consent must be by "exceptionally clear evidence." U.S. v. Berry, 670 F.2d 583, (5th Cir., 1982).

MIRANDA - INTERROGATION - WHAT CONSTITUTES - COMMENTS ABOUT DEFENDANT'S GIRLFRIEND

It has been held that comments by police officers in the presence of a defendant who had invoked his right to counsel, that they would have to involve the defendant's girlfriend in their investigation, were not the "functional equivalent of interrogation." Despite an officer's admission at a suppression hearing that he was trying to elicit a response from the defendant, the conversation was no more evocative than the one at issue in Rhode Island v. Innis, 446 U.S. 2191 (1980), a case the instant Court interprets as holding that police statements acting as "subtle compulsion" do not constitute interrogation. Additionally, the defendant's concerns about the involvement of his family and friends did not make him "peculiarly susceptible" to the officers' conversation. U.S. v. Thierman, 678 F.2d 1331 (9th Cir., 1982).

INCOMPETENCY - AMNESIA

A defendant's amnesia concerning the crime with which he is charged does not, by itself, justify finding him incompetent to stand trial. Competence depends not on the defendant's recall but whether the defendant is able to understand the nature of the object of the proceedings against him or to assist in his defense. Some courts have adopted a case-by-case approach in which the trial judge makes a post-trial determination of competence on the basis of such factors as how well the events in question were "reconstructed," but the instant Court rejected this approach, noting that everyone suffers from amnesia to some degree and that its effects on the conduct of a defense are at times hard to distinguish from other disadvantages suffered by defendants. Morrow v. State, 443 A.2d 108, (Md., 1982).

JURY - NOTE TAKING

A New York Appellate Court has held that jurors may take notes during trial if cautionary instructions concerning the taking and use of the notes are given both at the beginning of the trial and prior to the jury's deliberations. The Court followed the rule prevailing in most federal courts and left the decision to permit note-taking in a particular case to the discretion of the trial judge. Once the trial judge decides to allow note-taking, it is necessary to give cautionary instructions to the jury. These mandatory instructions must make it clear that a juror's note-taking activity must not distract him from the trial and that his notes should not take precedence over his own independent recollection. Absent an abuse of the trial judge's discretion, the decision to permit note-taking in a particular case will not be disturbed on appeal. People v. DiLuca, 448 N.Y.S.2d 730, (N.Y. App., 1982).

SENTENCE - RESTITUTION - HOMICIDE VICTIM'S CHILDREN

A probation condition that required an involuntary-manslaughter defendant to make restitution to the victim's children was approved in People v. Clark, 181 Cal. Rptr. 682, (Cal. App., 1982). The fact that the children were not direct victims of the crime and that the compensation did not represent direct liquidated damages did not make the order inappropriate. Restitution stands or falls on whether it serves one of the purposes set forth in the probation statute. In this case, the order helped to redress the injury done the children, who were "victims" of the crime within the meaning of the probation statute. Restitution would also serve the statutory goal of reforming and rehabilitating the defendant.

PROSECUTING ATTORNEY - PART-TIME PROSECUTORS - CONFLICT OF INTEREST

The Fifth Circuit Court of Appeals has ruled that a lawyer's part-time work as a city court prosecutor did not prevent him from representing as defense counsel a defendant tried in state court. By the same token, no conflict arose by virtue of similar work by counsel's partner. The Court took the position that an actual conflict of interest occurs when a defense attorney places himself in circumstances inherently conducive to divided loyalties. Even if the evidence supported his claim that defense counsel's partner was a prosecutor, representation of a defendant charged in state court with aggravated rape would not conflict with the official duties of an assistant city attorney assigned to a city court. Counsel's part-time employer was the city, not the state, so an apppearance in state court on behalf of a defendant would not put him in a "divided loyalties" situation. The Court noted that the elimination of part-time prosecutors from defense work might lead to similar prohibitions on other part-time public employees. In the instant case, neither defendant's counsel nor counsel's partner had represented anyone who was involved in defendant's trial. Also, the defendant's attorney had provided adequate and effective representation. Mitchell v. Maggio, 679 F.2d 77, (5th Cir., 1982).

EXPERT WITNESS - EFFECTS OF LSD

It was improper to admit expert testimony outlining behavorial changes caused by LSD use at a trial for the sale of the drug, because such testimony only served to inflame the jury and was irrelevant to the issue before them. Jurors in such cases need be concerned only with the issue of whether the defendant violated the law. The testimony had no bearing on the determination of whether the defendant sold LSD and diverted the jury from focusing solely on that issue. The Court held that the irrelevant testimony prejudiced the defendant's right to a fair trial and necessitated a reversal of the conviction. Smith v. Commonwealth, 292 S.E.2d 362, (Va., 1982).

SEARCH - WHAT CONSTITUTES - DRUG SNIFFING DOGS

Although the Ninth Circuit Court of Appeals has recently held that a trained dog's sniff of luggage is a search within the meaning of the Fourth Amendment, U.S. v. Beale, 674 F.2d 1327, the Second Circuit has reaffirmed its position that such procedures are not searches. The Ninth Circuit relied in part on the extra protection afforded luggage by the Fourth Amendment, but the Second Circuit rejected this analysis on the grounds that canine sniffing involves no physical intrusion into the luggage and discloses only contraband, not personal items. The Second Circuit concluded that an alert to a piece of luggage by a dog with a proven record of reliability will establish probable cause for the arrest of the person possessing the luggage. Such an alert is a much "more reliable, less intrusive, means" of establishing probable cause than are the often cited but much criticized drug courier profiles. U.S. v. Waltzer, 682 F.2d 370 (2nd Cir., 1982).

SCHOOL SEARCH - APPLICABILITY OF EXCLUSIONARY RULE

The Supreme Court of Alaska has held that although searches of students conducted solely by public school teachers and administrative personnel during school hours constitute "state action" under the Fourteenth Amendment, neither the Fourth Amendment nor its Alaska counterpart are applicable to such searches. The Court took the position that school teachers and administrators engaged in disciplinary matters are not charged with enforcing penal statutes or ensuring public safety. Instead, they merely supervise children committed to their care on the community's behalf. The Fourth Amendment applies not only to investigations of a suspected crime by individuals functioning as police but also to "area-wide exploratory investigations" by specialized law enforcement officers -- but neither kind of investigation was involved here. The Court also took the position that since the exclusionary rule will not deter searches by school officials, it should not be applied to them. Enforcement of school regulations and the safeguarding of students are incentives to search that will not be affected by suppression of evidence at a later judicial hearing. D.R.C. v. State, 646 P.2d 252, (Alaska, 1982).

I'M BUSY ON THE FIRST, BEN HAS A COMMITMENT ON THE SECOND, GEORGE HAS A DENTAL APPOINTMENT ON THE THIRD... IS THERE ANYBODY WHO CAN'T MAKE IT ON THE FOURTH OF JULY?
THANES 7-4

FELONY MURDER - EXTORTION - CONSCIOUS DISREGARD FOR HUMAN LIFE

In a a case of first impression in Massachusetts, it has been held that a conviction for second-degree felony-murder cannot be predicated on the statutory felony of extortion unless the extortion occurred under circumstances showing the defendant's conscious disregard of the risk to human life. A felony-murder rule that punishes all homicides committed in the perpetration of a felony, whether they are intentional or not, would violate the principle that criminal liability should be based on a culpable mental state. For the theory underlying the felony-murder rule -- that the intent to commit the felony is equivalent to malice aforethought -- to be tenable, that intent must demonstrate a conscious disregard for human life. But extortion may be committed in a way that is not inherently dangerous to human life. In setting aside the conviction, the Court refused to speculate on whether the jury's verdict could have been based on a finding of express rather than implied malice. Commonwealth v. Matchett, 436 N.E.2d 400, (Mass., 1982).

SENTENCE - RESTITUTION - SUBSTANTIAL SACRIFICES BY DEFENDANT

Although a court cannot set the amount of restitution so high as to exceed the defendant's ability to pay, it has been stated that "[i]n many instances * * * it will be necessary for a defendant to make substantial sacrifices in order to make restitution to the victims of his crimes. This is not an obstacle to an order requiring such restitution. Rather, where sacrifice is necessary, the probationer or parolee may learn to consider more carefully the consequences of his or her acts and thereby strengthen the offender's sense of responsibility. Thus, an order of restitution may properly require additional or alternative employment, a reduction of expenses, and even temporary change in lifestyle in order to achieve that sense of responsibility which signals effective rehabilitation. The true rehabilitative purpose of restitution is well served when a probationer or parolee is called upon to make reasonable sacrifices in order to compensate those who have sustained losses as a result of his criminal conduct. The rehabilitative goal is defeated only when the payments ordered by the court are so unreasonable in view of the defendant's financial circumstances and ability to work that, despite good faith efforts, the defendant cannot hope to comply." Commonwealth v. Wood, 446 A.2d 948 (Pa.App., 1982).

EXPERT WITNESS - RAPE TRAUMA SYNDROME - ADMISSIBILITY - FIRST CASE FOR PROSECUTION

The Supreme Court of Kansas has held that when consent is a defense in a prosecution for rape, a qualified expert psychiatric witness may testify regarding the existence of "rape trauma syndrome," and such evidence is relevant and admissible. According to Jay W. Vander Velde, County Attorney, Emporia, Kansas, a recent computer check of all appeal cases in the United States reveals that this is the first recognition and use of qualified expert psychiatric testimony regarding the existence

EXPERT WITNESS - RAPE TRAUMA SYNDROME - ADMISSIBILITY - FIRST CASE FOR PROSECUTION (CONT.)

of rape trauma syndrome on behalf of the prosecution in a criminal case. Excerpts from the Court's opinion follow: "Appellant next attacks the admission of the expert testimony of Dr. Herbert Modlin, a board certified psychiatrist and neurologist who practices psychiatry and teaches at the Menninger Foundation. He is also one of a small number of doctors to be certified in the field of forensic psychiatry. [par.] During his testimony Dr. Modlin discussed the diagnosis and treatment of 'post traumatic stress disorders.' The condition is caused when a person experiences a 'very frightening, stressful event' and manifests itself in a kind of 'psychological hangover.' According to Dr. Modlin a type of post traumatic stress disorder labeled 'rape trauma syndrome' is the result of a sexual assault. Symptoms of rape trauma syndrome include fear of offender retaliation, fear of being raped again, fear of being home alone, fear of men in general, fear of being out alone, sleep disturbance, change in eating habits and sense of shame. [par.] Dr. Modlin examined the victim two weeks after the rape. Based upon his psychiatric evaluation Dr. Modlin testified he was of the opinion she had been the victim of 'a frightening assault, an attack' and that she was suffering from the post-traumatic stress disorder known as rape trauma syndrome. [par.] Appellant does not contend Dr. Modlin lacks the requisite 'special knowledge, skill, experience or training,' to testify as an expert in this area. He argues that expert testimony regarding rape trauma syndrome should be per se inadmissible in a case where consent is the defense because it invades the province of the jury. [par.] The identification of rape trauma syndrome is a relatively new psychiatric development. Even so, if the presence of rape trauma is detectable and reliable as evidence that a forcible assault did take place, it is relevant when a defendant argues the victim consented to sexual intercourse. As such an expert's opinion does not invade the province of the jury. It is merely offered as any other evidence with the expert subject to cross-examination and the jury left to determine its weight. * * *[par.] An examination of the literature clearly demonstrates that the so-called 'rape trauma syndrome' is generally accepted to be a common reaction to sexual assault. * * * As such, qualified expert psychiatric testimony regarding the existence of rape trauma syndrome is relevant and admissible in a case such as this where the defense is consent." The defendant also argued that even if testimony was not based on "data perceived by or personally known or made known to the witness at the hearing." Essentially, his contention was that Dr. Modlin's opinion was based solely on what the victim told him during psychiatric evaluation and that because of this his conclusion was grounded upon incompetent hearsay evidence. The Court, however, noted that although the past "history" of the case, as related by the victim, would be within the hearsay rule and therefore not a proper foundation for an expert opinion, the doctor's testimony was competent because the facts comprising the history had actually been placed in evidence at the trial by the victim's own testimony. "The 'history' of this case is made up of facts which were received into evidence

EXPERT WITNESS - RAPE TRAUMA SYNDROME - ADMISSIBILITY - FIRST CASE FOR PROSECUTION (CONT.)

through the testimony of the victim and her roommate. Further, Dr. Modlin's testimony was based on symptoms he noted during his psychiatric evaluation of the victim. In this sense his conclusions were based on data personally perceived by him." State v. Marks, 647 P.2d 1292, (Kan., 0982).

NATIONAL COLLEGE OF DISTRICT ATTORNEYS

MASTER CALENDAR OF PROGRAMS FOR PROSECUTORS

SEPTEMBER 1982

1 - 3	Prosecuting Attorneys Council of Georgia Basic Prosecutors Course	Atlanta, Georgia
7 - 9	Maryland State's Attorneys' Association State's Attorneys Trial Advocacy Seminar	Port Deposit, Maryland
10 - 11	Arizona Prosecuting Attorneys' Advisory Council Scientific Evidence	Scottsdale, Arizona
12 - 14	Michigan Prosecuting Attorneys Coordinating Council Prosecutor-Appellate Specialists Conference	Higgins Lake, Michigan
15 - 16	Texas Prosecutor Council Offense Report Writing Workshop	
17	Prosecuting Attorneys Council of Georgia Securities Fraud	Atlanta, Georgia
20 - 22	Colorado District Attorneys Council Major Crime Investigation Seminar	Glenwood Springs, Colorado
20 - 24	Oregon District Attorneys Association Summer Institute for Prosecutors	Marylhurst, Oregon
22 - 24	Prosecuting Attorneys Council of Georgia Child Support	Atlanta, Georgia
23 - 24	Alabama District Attorney's Secretaries Association Fall Seminar	Huntsville, Alabama
27-Oct 1	Colorado District Attorneys Council Trial Techniques School for New Prosecutors	Denver, Colorado

OCTOBER 1982

3 - 7	TRIAL ADVOCACY FOR PROSECUTORS (NCDA)	PHOENIX/SCOTTSDALE, ARIZONA
4 - 8	Southeastern Prosecutors Institute	Gulf Shores, Alabama
6	Washington Association of Prosecuting Attorneys Fall Training on Sexual Assault	Pasco, Washington

11 - 13	Maryland State's Attorneys' Association Constitutional Law Seminar	Port Deposit, Maryland
11 - 15	California District Attorneys Association National Homicide Symposium	Los Angeles, California
15 - 16	Arizona Prosecuting Attorneys' Advisory Council Demonstrative Evidence	Flagstaff, Arizona
24 - 27	PUBLIC CIVIL LAW PROBLEMS (NCDA)	CHARLESTON, SOUTH CAROLINA
27 - 28	Texas Prosecutor Council Offense Report Writing Workshop	Brownwood, Texas
27 - 29	Prosecuting Attorneys Council of Georgia 22nd Annual Seminar for District Attorneys	Athens, Georgia
31-Nov 4	PROSECUTION OF VIOLENT CRIME (NCDA)	COLORADO SPRINGS, COLORADO
	Michigan Prosecuting Attorneys Coordinating Council Regional Seminars	Locations throughout Michigan

NOVEMBER 1982

4	Michigan Prosecuting Attorneys Coordinating Council Regional Seminar	Mt. Pleasant, Michigan
4 - 5	Alabama District Attorney's Child Support Division Fall Conference	Sheffield, Alabama
7 - 10	Iowa Prosecuting Attorneys Training Coordinator Council--Fall Training Conference	Des Moines, Iowa
14 - 16	Kansas County & District Attorneys Association Kansas Official Council	Wichita, Kansas
14 - 18	TRIAL ADVOCACY FOR PROSECUTORS (NCDA)	ORLANDO, FLORIDA
15 - 16	Maryland State's Attorneys' Association New Assistant State's Attorneys Orientation Program	Port Deposit, Maryland
17 - 18	Texas Prosecutor Council Offense Report Writing Workshop	
17 - 21	Mississippi Prosecutors College Fall Conference	Jackson, Mississippi
18 - 19	Washington Association of Prosecuting Attorneys Juvenile Training Program	Tukwila, Washington

19 - 20	Arizona Prosecuting Attorneys' Advisory Council Evidence, the Case in Chief	
	California District Attorneys Association New Prosecutors College	Sacramento, California

DECEMBER 1982

2 - 3	Maryland State's Attorneys' Association Forensic Science Workshop	Baltimore, Maryland
2 - 4	Arkansas Prosecuting Attorneys' Association Annual Meeting	Little Rock, Arkansas
3 - 4	Washington Association of Prosecuting Attorneys Winter Meeting	Seattle, Washington
3 - 4	Arizona Prosecuting Attorneys' Advisory Council Robbery and Major Case Preparation	Tucson, Arizona
5 - 10	PROSECUTOR'S INVESTIGATORS SCHOOL (NCDA)	HUNTSVILLE, TEXAS
5 - 10	Michigan Prosecuting Attorneys Coordinating Council Basic Training	Lansing, Michigan
8 - 10	Oregon District Attorneys Association Winter Conference	Eugene, Oregon
8 - 10	Missouri Prosecuting Attorneys Association Statewide Training Seminar	Lake Ozark, Missouri
8 - 10	Texas Prosecutor Council Instructor Training Workshop	Austin, Texas
9 - 11	Ohio Prosecuting Attorneys Association Annual Meeting	Cincinnati, Ohio
12 - 16	Indiana Prosecuting Attorneys Council Winter Conference	Indianapolis, Indiana
	Prosecuting Attorneys Council of Georgia 1983 District Attorneys Conference	Macon, Georgia
	New Prosecuting Attorneys Seminar	Atlanta, Georgia

JANUARY 1983

9 - 14	APPLIED TRIAL TECHNIQUES (NCDA)	HOUSTON, TEXAS

9 - 12	Maryland State's Attorneys Association Mid-Winter Conference	Champion, Pennsylvania
12 - 14	Michigan Prosecuting Attorneys Coordinating Council Support Seminar	Higgins Lake, Michigan
14 - 15	Arizona Prosecuting Attorneys' Advisory Council Arson	
20 - 21	Alabama District Attorneys Association Mid-Winter Conference	Sheffield, Alabama
20 - 21	Nebraska County Attorneys Association Winter Training Session	Kearney, Nebraska
	Iowa Prosecuting Attorneys Coordinator Council New Prosecutors School	Des Moines, Iowa
	Missouri Prosecuting Attorneys Association Training Seminar for New Prosecutors	Columbia, Missouri
	California District Attorneys Association Winter Conference	Palm Springs, California

FEBRUARY 1983

8 - 12	OFFICE ADMINISTRATOR COURSE (NCDA)	ATLANTA, GEORGIA
10 - 11	Maryland State's Attorneys Association Special Board Meeting and Orientation for Newly Elected State's Attorneys	Port Deposit, Maryland
11 - 12	Arizona Prosecuting Attorneys' Advisory Council Conspiracy and Drug Cases	
20 - 24	National District Attorneys Association and National College of Juvenile Justice Tenth National Conference on Juvenile Justice	Hilton Head, South Carolina
22 - 26	EXPERIENCED PROSECUTOR COURSE (NCDA)	MYRTLE BEACH, SOUTH CAROLINA
	Pennsylvania District Attorneys Association Mid-Winter Meeting	Philadelphia, Pennsylvania
	California District Attorneys Association Advanced Prosecutor College	San Bernardino, California
	New Prosecutors College	Anaheim, California
	Louisiana District Attorneys Association DAI/ADA Training Seminar	Baton Rouge, Louisiana

MARCH 1983

2 - 4	Kansas County & District Attorneys Association Annual Attorney General's Call	Lawrence, Kansas
6 - 10	INVESTIGATION AND PROSECUTION--THE PROSECUTOR'S DUAL ROLE (NCDA)	WASHINGTON, D.C.
6 - 11	National District Attorneys Association Mid-Winter Conference	Reno, Nevada
11 - 12	Arizona Prosecuting Attorneys' Advisory Council Cross-Examination	
24 - 25	Washington Association of Prosecuting Attorneys Spring Meeting	Olympia, Washington
	Prosecuting Attorneys Council of Georgia Prosecution of Misdemeanors	

APRIL 1983

6 - 9	PUBLIC CIVIL LAW PROBLEMS (NCDA)	RENO, NEVADA
13 - 15	Missouri Prosecuting Attorneys Association Statewide Training Seminar	Lake Ozark, Missouri
15 - 16	Arizona Prosecuting Attorneys' Advisory Council Effective Argument	
17 - 21	TRIAL ADVOCACY FOR PROSECUTORS (NCDA)	CHICAGO, ILLINOIS
26 - 30	OFFICE ADMINISTRATOR COURSE (NCDA)	SAN ANTONIO, TEXAS
27- 29	Alabama District Attorney's Association Investigators Section--3rd Annual White Collar Crime Seminar	Huntsville, Alabama
28 - 29	Nebraska County Attorneys Association Spring Training Session	Grand Island, Nebraska
30-May 4	National District Attorneys Association National Legislative Conference	Washington, D.C.
	Louisiana District Attorneys Association Secretaries' Training Conference	New Orleans, Louisiana
	Washington Association of Prosecuting Attorneys Basic Traffic Program	

MAY 1983

15 - 18	Michigan Prosecuting Attorneys Coordinating Council Advanced Training	Higgins Lake, Michigan
	California District Attorneys Association New Prosecutors College	Northern California
	Louisiana District Attorneys Association Child Support Enforcement Conference	Baton Rouge, Louisiana

JUNE 1983

2 - 3	Alabama District Attorney's Child Support Division Summer Conference	Gulf Shores, Alabama
3 - 10	EXECUTIVE PROSECUTOR COURSE (NCDA)	HOUSTON, TEXAS
23 - 24	Washington Association of Prosecuting Attorneys Summer Conference	Lake Chelan, Washington
23 - 26	Ohio Prosecuting Attorneys Association Summer Meeting	Huron, Ohio
	Iowa Prosecuting Attorneys Training Coordinator Council--Spring Training Conference	Arnolds Park, Iowa
	California District Attorneys Association Economic Crime Conference	

JULY 1983

8 - 22	CAREER PROSECUTOR COURSE (NCDA)	HOUSTON, TEXAS
13 - 16	Oregon District Attorneys Association Summer Conference	Sunriver, Oregon
27 - 30	Michigan Prosecuting Attorneys Coordinating Council 56th Annual Conference	Mackinac Island, Michigan
28 - 29	Prosecuting Attorneys Council of Georgia 1983 Nuts and Bolts Seminar	
	Missouri Prosecuting Attorneys Association Trial Advocacy Seminar	Columbia, Missouri

Louisiana District Attorneys Association
10th Annual Conference

Pennsylvania District Attorneys Association
Summer Meeting

AUGUST 1983

14 - 19	National District Attorneys Association Summer Conference	Nashville, Tennessee
15 - 16	Alabama District Attorneys Association Mid-Summer Conference	Gulf Shores, Alabama